

GENOVA AND MALIN
Attorneys for the Debtors
Hampton Business Center
1136 Route 9
Wappingers Falls, New York 12550
(845) 298-1600
Thomas Genova, Esq. (TG4706)
Andrea B. Malin, Esq. (AM4424)

DATE: AUGUST 22, 2017
TIME: 10:45 A.M.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

TIMOTHY P. SANKER and
TERRY ANN SANKER

CHAPTER 13
CASE NO. 17-5935(CGM)

Debtors.

-----X

**NOTICE OF MOTION TO VOID LIEN PURSUANT TO 11 U.S.C. §§506(a)
AND 506(d) AND OBJECTING TO CLAIM PURSUANT TO 11 U.S.C. 502 AND
FEDERAL RULE OF BANKRUPTCY PROCEDURE 3007**

PLEASE TAKE NOTICE upon the motion of TIMOTHY P. SANKER and TERRY ANN SANKER, (the “debtors”) by their attorneys, GENOVA & MALIN, the undersigned will move this Court before the HONORABLE CECELIA G. MORRIS, U. S. Bankruptcy Judge, at the U. S. Bankruptcy Courthouse, 355 Main Street, Poughkeepsie, New York on the 22nd day of August, 2017 at 10:45 a.m. or as soon thereafter as counsel can be heard for an Order pursuant to 11 U.S.C. §§502(a)(1), 506(a) and 506(d) and Federal Rule of Bankruptcy Procedure 3007, as follows:

- (a) valuing the debtors’ 2013 Ford C-Max, Vin. Number 1FADP5AU0DL548795 (the “vehicle”) at FIVE THOUSAND DOLLARS (\$5,000.00);
- (b) pursuant to 11 U.S.C. §§506(a) and 506(d) valuing the lien held by FORD MOTOR CREDIT COMPANY, LLC (“FORD”) in the sum of FIVE THOUSAND DOLLARS

(\$5,000.00) and disallowing and declaring the remainder of the lien void;

(c) reducing and reclassifying the following claim:

<u>Claim No.</u>	<u>Claimant</u>	<u>Amount</u>
1	FORD MOTOR CREDIT COMPANY, LLC	\$16,401.06; and

(d) for such other and further relief as to the Court may seem just and proper.

PLEASE TAKE FURTHER NOTICE, that answering papers, if any, shall be served upon and received by counsel for the debtor at the address indicated below and filed with the Court together with proof of such service, no later than seven (7) days prior to the return date hereof.

Dated: Wappingers Falls, New York
July 19, 2017

GENOVA & MALIN
Attorneys for the Debtors

By: /s/ Andrea B. Malin
ANDREA B. MALIN, ESQ. (4424)
Hampton Business Center
1136 Route 9
Wappingers Falls, NY 12590
(845) 298-1600

TO: Jeffrey L. Sapir, Esq
Chapter 13 Trustee
399 Knollwood Road
White Plains, NY 10603

Ford Motor Credit Co., LLC
PO Box 62180
Colorado Springs, CO 80962-4400
Attn.: President

Ford Motor Credit Co., LLC
Corporate Headquarters
One American Road
Dearborn, MI 48126
Attn.: President

Schiller, Knapp, et al
Attorneys for Ford Motor Credit Co., LLC
950 New Loudon Road
Latham, New York 12110
Attn.: Martin Mooney, Esq.

Mr. and Mrs. Sanker
329 Hudson Avenue
Beacon, NY 12508

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

TIMOTHY P. SANKER and
TERRY ANN SANKER

CHAPTER 13
CASE NO. 17-5935(CGM)

Debtors.

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**AFFIRMATION IN SUPPORT OF MOTION TO VOID LIEN PURSUANT
TO 11 U.S.C. §§506(a) AND 506(d) AND OBJECTING TO CLAIM PURSUANT
TO 11 U.S.C. 502 AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 3007**

TO HONORABLE CECELIA G. MORRIS, UNITED STATES BANKRUPTCY JUDGE:

ANDREA B. MALIN, duly admitted to practice law before this Court, alleges upon information and belief:

1. The debtors filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code on May 30, 2017.
2. The debtors own a 2013 Ford C-Max, Vin. Number 1FADP5AU0DL548795, (the “Vehicle”).
3. On or about November 12, 2013, the debtors executed a promissory note secured by their Vehicle in favor of FORD MOTOR CREDIT COMPANY, LLC (“FORD”).
4. On or about July 16, 2017, SIMCHA RAIZMAN of S. RAIZMAN AUTO SALES performed and appraisal of the debtors’ Vehicle determining it to have a value of FIVE

THOUSAND DOLLARS (\$5,000.00). Annexed hereto as Exhibit "A" is a copy of the Appraisal.

**A. THE LIEN HELD BY FORD HAS A VALUE OF \$5,000.00
PURSUANT TO 11 U.S.C. §506(a) AND THE REMAINDER OF
SAID LIEN HAS A VALUE OF ZERO AND IS THUS VOID
PURSUANT TO 11 U.S.C. §506(d)**

5. At the time of the filing of the petition, the Vehicle was encumbered by a lien held by FORD in the sum of SIXTEEN THOUSAND FOUR HUNDRED ONE DOLLARS AND SIX CENTS (16,401.06).

6. Pursuant to the appraisal, the value of FORD'S interest in the estate's interest in the Vehicle secured by such lien is FIVE THOUSAND DOLLARS (\$5,000.00).

7. By reason of the foregoing, it should be determined that the value of the secured claim is FIVE THOUSAND DOLLARS (\$5,000.00).

8. Pursuant to the appraisal, the value of the remainder of the debt due and owing on the Vehicle in the sum of ELEVEN THOUSAND FOUR HUNDRED ONE DOLLARS AND SIX CENTS (\$11,401.06) is zero.

9. By reason of the foregoing, it should be determined that the value of said portion of the claim is zero.

10. By reason of the foregoing, the lien securing said portion of the claim should be disallowed and declared void.

11. Accordingly, pursuant to 11 U.S.C. §§506(a) and 506(d), the lien of FORD is secured to the extent of FIVE THOUSAND DOLLARS (\$5,000.00) against the debtors' Vehicle and the remainder of the lien in the sum of ELEVEN THOUSAND FOUR HUNDRED ONE DOLLARS AND SIX CENTS (\$11,401.06) is valued at zero, disallowed and declared void.

B. CLAIM NO. 1 FILED BY FORD

12. The debtors have examined into Claim No. 1 filed by FORD on June 16, 2017, as a secured claim in the sum of ELEVEN THOUSAND FIVE HUNDRED FIFTY DOLLARS (\$11,550.00) and a general unsecured claim in the sum of FOUR THOUSAND EIGHT HUNDRED FIFTY-ONE DOLLAR AND SIX CENTS (\$4,851.06). (See Claim No. 1 filed with this Court.)

13. Accordingly, pursuant to 11 U.S.C. §§506(a), and 506(d), as FORD'S lien may be bifurcated, the secured portion of Claim No. 1, in the sum ELEVEN THOUSAND FIVE HUNDRED FIFTY DOLLARS (\$11,550.00) should be reduced to a secured claim in the sum of FIVE THOUSAND DOLLARS (\$5,000.00); and the remaining portion of the secured claim should be reclassified as a general unsecured claim in the sum of EVEN THOUSAND FOUR HUNDRED ONE DOLLARS AND SIX CENTS (\$11,401.06).

WHEREFORE, it is respectfully requested that the Court enter an Order:

- a. pursuant to 11 U.S.C. §506(a), valuing the debtors' Vehicle in the sum of FIVE THOUSAND DOLLARS (\$5,000.00);
- b. pursuant to 11 U.S.C. §§506(a) and 506(d), valuing the lien held by FORD as against the debtor's Vehicle in the sum of FIVE THOUSAND DOLLARS (\$5,000.00) and disallowing and declaring the remainder of said lien void; and
- c. pursuant to 11 U.S.C. §§502, 506, and Federal Rule of Bankruptcy Procedure 3007, reducing the secured portion of Claim No. 1 filed by FORD to the sum of FIVE THOUSAND DOLLARS (\$5,000.00), reclassifying the remainder of said secured claim to a general unsecured claim in the sum of EVEN THOUSAND FOUR HUNDRED ONE DOLLARS AND SIX CENTS (\$11,401.06) ; and

d. granting to the debtors such other and further relief as to this Court seems proper.

Dated: Wappingers Falls, New York
July 19, 2017

GENOVA & MALIN
Attorneys for the Debtors

By: /s/ Andrea B. Malin
ANDREA B. MALIN, ESQ. (4424)
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Affirmed this 19th
day of July, 2017